

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 13 and 18 - 25 are currently pending in the application. All claims have been rejected.

By the present amendment, claim 13 has been amended.

In the office action mailed January 2, 2008, the Examiner objected to the amendment to the specification filed September 29, 2008. While Applicant disagrees with the Examiner's contention that the amendment raised new matter, Applicant has decided to amend the specification to place it back into its original state. For the record however, the specification and drawings do teach the man skilled in the art that there are two driving shafts joined to each other. Referring now to the specification of the instant application as published under no. 2006/0021516, Fig. 2 shows two driving shafts with reference numerals 30 and 29. The driving shaft 29 has a free shaft stump 32, which is joined by a plug-in coupling to the agitator 33. On the other side of the bottom 27 of the service drum 19, the driving shaft 29 has a second free shaft stump without a reference numeral. It is represented in the same manner as the free shaft stump 32. It is joined to the driving shaft 30. The driving shaft 30 is designed to embrace the shaft stump. It is clear to the person skilled in the art, that the driving shaft 29 and the driving shaft 30 are joined somehow in the manner of a plug in coupling. There is in any case the driving shaft 29, a separated driving shaft, and not one piece with the driving shaft 30.

The specification quotes both of them in paragraph [0018] as joined to each other and gives them two reference numerals:

"A **driving shaft 29** passes through the centre of the bottom 26 of the frying drum 20 and the bottom (27) of the service drum 19 and on the side of the vertical limb 17 **is jointed to the driving shaft 30 of an electrical motor 31** that passes through the vertical limb 17. The free shaft stump 32 that projects free into the frying drum 20 is joined by means of a plug-in coupling to the agitator 33, which rotates around the fixed discharge drum 21."

The question is whether a driving shaft can be a part of the driving shaft to which it is joined to. Applicant clearly says that it always needs at least two parts if you want to join something with something else. This is supported by Merriam Webster's Third New International Dictionary, teaching related to JOIN:

"1a. to put or bring together and fasten, connect, or relate so as to form a single unit, a whole or a community: COMBINE, LINK (~two blocks of wood with glue)...

b: to connect (as two points) by a line (as a straight line)

c: ADJOIN <this studio there ~ed that of the famous sculptor - J.T.Marshall>

2: to put or to bring into close contact, association, or relationship: ATTACH, UNITE, COUPLE...

3: to enter into or engage (in battle)

4a: to come into company of: come into local contact or association with...

b: to connect or associate oneself with..."

Therefore, the drawings, the reference numerals and the relationship (joined to) described in the specification clearly teach the man skilled in the art that there are a first drive shaft 29 and a second drive shaft 30, whether they are

distinguished by adding "first" or "second" or not. But, as expressed above, it is not necessary to clarify this point. The specification makes it clear enough.

Further in the office action, the Examiner rejected claim 13 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. This rejection is now moot in view of the amendment to claim 13.

Further in the office action, claims 13 and 18 - 25 were rejected on the ground of nonstatutory obviousness type double patenting as being unpatentable over the claims of U.S. Patent No. 7,030,341. The rejection is fatally flawed. The M.P.E.P. requires the Examiner to perform a *Graham v. Deere* type analysis when making a double patenting rejection. The Examiner has not done this. The Examiner has not pointed out the differences between the claims in the instant application and the claims in the '341 patent and has not presented a line of reasoning which would lead one to the legal and factual conclusion that the claims in the instant application are obvious over the claims in the '341 patent. In Applicant's opinion, the claims in the instant application are novel and unobvious with regard to the claims of the '341 patent.

Independent claim 19 defines a frying device for cooking foodstuffs, comprising: a service drum; a unit comprising a frying drum designed as a hollow cylinder having a horizontal axis and being closed on all sides, containing liquefied cooking fat, and a discharge drum having a discharging conveyor chute, arranged coaxial within the frying drum and being attached to a cover of the frying drum; said unit being accommodated in the service drum in such a manner as to be removable from the service drum by axial displacement; a motor; a revolving agitator accommodated in the frying drum, connected to the motor and rotatable around the fixed discharge drum, conveying cooked

portions onto a conveyor chute when driven by the motor; a storage container for foodstuffs to be cooked; and a transportation pipe connecting the frying drum to the storage container for supplying the frying drum with portions of the foodstuffs.

Claim 1 of the '341 patent is directed to a cooking vessel comprising a frying heating device for the "floating" frying of food portions and luxury foodstuffs, wherein the frying fat heating device has a hollow cylindrical conduction sleeve with heating elements accommodated within the conduction sleeve and a current space connected with the conduction sleeve via a floor space.

As can be seen from the foregoing discussion, the two claims are directed to completely different aspects of a cooking vessel and a frying device. They can be achieved in completely different apparatuses, one having the features of all of the claims of the '341 patent and none of the features disclosed in claims 13 and 18 to 25 of the instant application; and the other having the features of all of the claims 13 and 18 to 25 and none of the features claimed in the '341 patent.

The claims of the '341 patent are incapable of suggesting or rendering obvious the following features of independent claim 19: (a) a service drum; (b) a unit comprising a frying drum and a discharge drum; (c) the frying drum being designed as a hollow cylinder having a horizontal axis; (d) a discharge drum having a discharging conveyor chute, arranged coaxial within the frying drum and being attached to a cover of the frying drum; (e) said unit being accommodated in the service drum; (f) said unit being removable from the service drum by axial displacement; (g) a revolving agitator accommodated in the frying drum, connected to a motor and rotatable around the fixed discharge drum, conveying cooked portions onto a conveyor chute when driven by the motor;

(h) a storage container for foodstuffs to be cooked; and (i) a transportation pipe connecting the frying drum to the storage container. The rejection contains no discussion where any of these features can be found in the claims of the '341 patent and thus is fatally flawed.

It should also be noted that since the subject matter of claim 19 is not obvious with respect to the claims of the '341 patent, none of claims 13, 18, and 20 to 25 can be obvious.

Further, if one looks at the other way round, the following features of the claims of the '341 patent are not addressed with respect to the pending claims: (1) a fat heating device, however, it is clear that such a device is needed; and (2) a hollow cylindrical conduction sleeve with the heating element accommodated within the conduction sleeve. The Examiner offers no explanation why one of ordinary skill in the art having the '341 claims before him/her would find it obvious to delete these features.

Still further, the following features of the '341 patent are not addressed in the pending claims of the instant application:

- (a) current space connected with the conduction sleeve via a floor space;
- (b) a circular space on an up-current space;
- (c) a conveyance device located in the conduction sleeve on a down-current side of the heating element;
- (d) a powered propeller;
- (e) adjustable propeller blades;
- (f) electrically powered serpentine shaped heating rods as heating elements;
- (g) circular disks of the heating element;
- (h) bent sections of the heating elements spaced apart from one another;

(i) a conduction sleeve accommodated in the current space;
(j) a riser pipe; and
(k) a box like appendage located on a circumference wall of the cooking vessel and a part of circumference wall covered by the appendage forms a filter wall with first access openings for introducing cooled frying fat into the conduction sleeve and second access openings for introducing heated frying fat into the cooking vessel.

Since there is no one way infringement of the claims of the '341 patent and the instant claims, there can be no double patenting rejection of any type.

For the following reasons, the obviousness type double patenting rejection should be withdrawn. If the Examiner maintains the rejection, the Examiner is hereby requested to comply with the requirements for such a rejection as set forth in the M.P.E.P. and provide an articulated line of reasoning which points how the claims of the '341 patent render the subject matter of the present invention as set forth in claims 13 and 18 to 25 obvious.

The instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

No fee is believed to be due as a result of this response. Should the Director determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, he is

hereby invited to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,

Ulrich Maurer

By: /Barry L. Kelmachter #29999/
Barry L. Kelmachter
BACHMAN & LaPOINTE, P.C.
Attorney for Applicant
Reg. No.: 29,999

Telephone: 203-777-6628
Telefax: 203-865-0297
Email: docket@bachlap.com

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